IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO.359-O OF 2001
IN
COMP. PETITION NO.7/B/1998

Official Liquidator,
High Court of Bombay,
Panaji. ... Applicant.

V/s.

1. Aktar Hassan Shaikh,
C/o. Abdul Hassan Shaikh,
Vengurla District Sindhudurg,
Maharashtra.

2. Abdul Sheikh Hassan,
Vengurla, S.T. Depot,
Tal. Vengurla. .... Respondents.

Ms. Amira Razak, Advocate for the applicant.

Respondents - absent.

CORAM : P.V. HARDAS, J.

DATE : 21ST MARCH, 2003.

ORAL ORDER :

On the pleadings of the parties, the following issues were framed on 19/4/2002 :

1. Whether the Official Liquidator proves that the respondent no.1 alongwith respondent no.2 is jointly and severally liable for amount as claimed in Claim Application ?

2. Whether the respondent no.1 proves that he is not liable for the amount as shown in the claim application ?

3. Whether the respondent no.2 proves that he alongwith respondent no.1 is not jointly and severally liable for repayment of the loan amount as claimed in the Claim Application ?

2. The applicant in support of his claim, has examined Shri Pradeep Harmalkar who, at the relevant time, was a whole-time Director of the Company under liquidation. He states that he knows respondent No.1. The Board of Directors of the Company under liquidation had taken a decision to open a branch at Vengurla, Sindhudurga District (Maharashtra). Respondent No.1 had met AW.1 in that connection and assured to give his premises for the opening of the branch and for that purpose, had asked for an advance of Rs.20,000/- in order to renovate the premises and give the same on rent to the Company. Accordingly, the amount of Rs.20,000/- was paid by the Company under liquidation to respondent No.1. Despite the receipt of the amount of Rs.20,000/-, respondent No.1 did not hand over the premises to the Company, nor did he return the said amount to the Company. On several requests being made to respondent No.1 to refund the amount of Rs.20,000/-, respondent No.1 requested the Company to convert the said advance of Rs.20,000/- into a loan account. Towards the said conversion, respondent No.1 had submitted loan application. The said application is at Exhibit AW.1/A. Respondent No.1 was granted facility to repay the amount of Rs.20,000/- by monthly instalment of Rs.1000/-. Initially, respondent No.1 was regular in payment of the instalments, but, thereafter, respondent No.1 committed defaults. Since respondent No.1 was irregular in payment of the instalments, the Company issued notice to

respondent No.1 by Registered A/D dated 26.6.1996, calling upon respondent No.1 to pay the amount outstanding in his loan amount. The said notice is at Exhibit AW.1/B and the Postal acknowledgement is at Exhibit AW.1/C. Similar request was made by another letter dated 28.4.1997, which is at Exhibit AW.1/D and the Postal acknowledgement is at Exhibit AW.1/E. As per the extract of the Loan Ledger which is at Exhibit AW.1/F the amount outstanding against respondent No.1, inclusive of interest, as on 1.10.1998 is Rs.17,006.00. The rate of interest agreed to be paid by respondent No.1 was 20 % per annum. The applicant thus claims Rs.25,036/- with future interest at the rate of 20 % from the date of filing of the claim, till realisation of the amount from respondent No.1.

3. The respondents were absent when the evidence of AW.1 was recorded. Respondents were also absent earlier when the matter was on board before this Court.

4. There are no documents on record to substantiate the claim of the applicant that respondent No.2 stood as surety and is, therefore, jointly and severally liable for the repayment of the loan amount. Except for the bald statement of AW.1 Pradeep Harmalkar, there are no documents to support his assertion.

5. Thus, the applicant has led evidence to prove Issue No.1 partly that respondent No.1 has availed of the loan of Rs.20,000/- and is liable to pay to the applicant an amount of Rs.25,036/- with future interest at the rate of 20 % per annum. The applicant has, however, failed to prove that respondent No.2 is jointly and severally liable for the repayment of the loan. Since respondent No.1 is absent, therefore, Issue No.2 is held to be not proved. Issue No.3 does not arise for consideration in view of my finding which is recorded in respect of Issue No.1 that the applicant has not proved the joint and several responsibility of respondents to pay the amount of loan.

6. In view of this, the claim succeeds against respondent No.1 only. The claim as against respondent No.2 is dismissed. In the result, therefore, the claim of the applicant for Rs.25,038/- with future interest at the rate of 20 % per annum with costs of Rs.2,000/- is decreed against respondent No.1. The claim, as against respondent No.2, is dismissed. Decree be drawn up accordingly.

P.V. HARDAS, J.

ssm.